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In England the rule stated in *Huntington v. Attrill* has long been recognized, and will, no doubt, continue to prevail.²³ Our State courts, on the other hand, are inclined to discredit the broad distinction made in *Huntington v. Attrill* between laws penal and remedial and, as already shown, generally adopt the rule herein contended for.²⁴

EFFECT OF ABANDONMENT OF DOMICIL OF CHOICE.—Since the two principles of domicile that no person can be without a domicile¹ and that no person can have more than one domicile at a time² are settled law, it follows that when a person ceases to hold his domicile as his permanent residence (i. e. to reside there with the intention of residing there permanently, which may be taken as a working definition of domicile), the law must assign him some definite domicile. When the domicile of origin is thus abandoned, the result is apparent—the law must of necessity consider him as retaining that domicile which he has renounced, for there is no other possible domicile to assign him. And so the courts hold.³ But upon the abandonment of a domicile of choice, any one of three courses may be pursued, for the law may give him back his original domicile, or one of his domicils (acquired either by construction of law or by choice) intermediate between the domicile of origin and his last domicile, or it may compel him to retain the last (abandoned) domicile of choice. The courts are in conflict on this question.

The American doctrine is that in this case, as in the abandonment of a domicile of origin, the (last) abandoned domicile is retained until another is acquired, *facto et animo*.⁴ The English view

trill, the court said: "This is not a suit of a civil nature, within the meaning of the Acts of Congress, but is rather an action to recover a penalty under a state law, which penalty is to be exacted partly, if not exclusively, as an act of public law, and in defense of the public justice of the state."

²³ *Huntington v. Attrill*, (1893) A. C. 150; *Raulin v. Fischer*, 27 Times L. R. 220, 8 L. J., K. B. 811, 2 K. B. 93 (1911), 104 L. T. 849; DICEY, CONFL. LAWS, 221.

²⁴ See cases cited in note 10.

¹ *Shaw v. Shaw*, 98 Mass. 158.

² *Otis v. Boston*, 12 Cush. (Mass.) 44. See DICEY, CONFL. LAWS, 96, 97. The domicile of a wife suing for divorce is an exception which is probably more apparent than real. See MINOR, CONFL. LAWS, § 28.

³ *Dupuy v. Wurtz*, 53 N. Y. 556; *Bell v. Kennedy*, L. R. 1 H. L. Sc. 307. See *Hicks v. Skinner*, 72 N. C. 1, where the court, holding that the law of the place of residence of the parties at the time of the making of an ante-nuptial agreement was the proper law, asserted that upon abandonment by the husband of his domicile of origin he was "without domicile, except the domicile of residence."

⁴ *First National Bank v. Balcom*, 35 Conn. 351; *Cooper v. Beers*, 143 Ill. 25, 33 N. E. 61. The following are often cited as being in point, and contain statements that no domicile can be lost except by the acquisition of another, *facto et animo*. Cases in which it does not appear whether the abandoned domicile was that of origin or one of choice: *Lamar v. Mahoney*, Dudley (Ga.) 92; *Pfoutz v. Comford*, 36 Pa. St. 420;

is that since a domicile of choice is created simply by the concurrence of the fact of residence and the intention to retain that residence indefinitely, it is completely destroyed by its abandonment, regardless of the acquisition of another domicile, and that upon its abandonment the domicile of origin, which has been imposed by law and which, it is asserted, cannot be destroyed by act of the person and is only suspended by the choice of a different domicile, is instantly revived.⁵ This theory has been briefly termed "the reverter of the domicile of origin."

Substantial objections have been urged against each view, both by text writers⁶ and by the courts,⁷ and it must be confessed that there are cases which under each view would lead to manifestly absurd conclusions. Another theory, however, which seems both logical and adequate, has been suggested,⁸ and a statement of it will be attempted here.

The contradictory theories seem to arise from the assumption that, in order to attain consistency, either the domicile of origin or the last abandoned domicile of choice must be held to prevail in all cases—that it could not be held on one set of facts to be the one domicile, and on another set of facts the other domicile. And the possibility of reviving a domicile intermediate to these two is not mentioned. And this embarrassment, in turn, results from the failure to apply any general principle of construction which will give weight to the particular facts of each case. Now, the domicile under consideration is, in effect at least, a constructive domicile, for it is one imposed by law in pursuance of the maxim that no man can be without a domicile, and when, as a matter of fact, he has renounced his last domicile and has acquired no other. Upon what principle, then, does the law determine a constructive domicile? In short, upon the principle of probability.⁹ Where a constructive domicile is made necessary by the fact that the person is not in law capable of fixing his own home, as in the case of infants or of married women, the law will presume that the domicile is in that country where, under the circumstances, experience has shown that the majority of such persons do in fact have their homes, and evidence that this particular person actually resides elsewhere will

Shaw v. Shaw, *supra*; Ayer v. Weeks, 65 N. H. 248, 18 Atl. 1108; State v. Scott, 171 Ind. 349, 86 N. E. 409. Cases in which the abandoned domicile was that of origin: Otis v. Boston, *supra*; Dupuy v. Wurtz, *supra*; Borland v. Boston, 132 Mass. 89, 42 Am. Rep. 424; Glotfelty v. Brown, 148 Ia. 124, 129 N. W. 797. There are numerous *dicta* to the same effect throughout the American cases.

⁵ Udny v. Udny, L. R. 1 Sc. App. 441.

⁶ MINOR, CONFL. LAWS, § 66; JACOBS, DOMICIL, § 199.

⁷ First National Bank v. Balcom, *supra*; Udny v. Udny, *supra*. Succession of Steers, 47 La. Ann. 1551, 18 So. 503, gives an interesting suggestion as to the cause of the adoption of these two conflicting views in the two countries, based on the habits and customs of the peoples.

⁸ MINOR, CONFL. LAWS, § 66.

⁹ MINOR, CONFL. LAWS, §§ 31-33, 35-37, 46, 66.

not be heard.¹⁰ And where the domicile is constructive, not because the person is incapable of choosing a home, but because he has failed or declined to exercise his power of choice, analogous principles should be applied. But in this case we cannot generalize the probabilities as before, for the will is individual, and too much influenced by the particular facts of each person's own life. Therefore, evidence should be received in order to ascertain this probability of intention. The rule follows, then, that the law should set apart as his domicile that country which, under all the circumstances of the case, would be most naturally looked upon by him as his home had he exercised his power of choice. It should be determined as a matter of law based upon the ascertained facts, and circumstances which tend to show his probable preference, such as citizenship,¹¹ family ties, length of residence in a former domicile, declarations of intention and feeling, should be considered. A few illustrations may be appropriate. If a person, whose domicile of origin is in Spain and who is born of English parents, should acquire a constructive domicile in England at the age of four and be reared there, and acquire a domicile of choice in France shortly before his death, which he abandons, he should be held to be domiciled in England at his death, since the probabilities are not in favor of his considering either his original domicile or his last domicile as his home, but point to his intermediate domicile as the most reasonable solution.¹² Also, if his domicile of origin had been English, the other facts remaining the same, he should still be held to be domiciled in England at his death—but not because that was his domicile of origin. However, if he had moved to France in his youth, married there, educated his children there, and become a French citizen, and then abandoned that domicile late in life—on these facts he should be considered to be domiciled in France at his death.

¹⁰ MINOR, CONFL. LAWS, §§ 34, 35.

¹¹ See *First National Bank v. Balcom*, *supra*; *The Indian Chief*, 3 Rob. Adm. (Eng.) 12; *Miller's Estate*, 3 Rawle (Pa.) 312, *dictum*. It has been suggested that in all cases of the type under consideration the domicile should be held to be in that state of which the person is a citizen. MINOR, CONFL. LAWS, § 66. It is undeniably true that this is a circumstance which is entitled to great weight in determining the probability of the preference as between two alleged domicils which are entirely foreign to each other. Some further principle, however, must be applied when the two alleged domicils are states under the same general sovereignty with the same citizenship, as England and Scotland. In *Udny v. Udny*, *supra*, this principle of citizenship is criticised as confounding the political and civil states of an individual, and destroying the distinction between *patria* and *domicilium*. To deduce the probable intention of resuming a domicile from the natural influence of nationality or citizenship is not, however, to assert an identity between the two. In fact it is impliedly based upon a distinction between them. Nor is it meant here to endorse the expressions found in *Moorhouse v. Lord*, L. R. 10. H. L. C. 272, which are repudiated in *Udny v. Udny*, *supra*, indicating that an intention to change one's nationality is essential to a change of domicile.

¹² See the remarks of Sir John Wickers, *Douglas v. Douglas*, L. R. 12 Eq. 617.

Although the courts have in no case expressly laid down this theory, it is believed that it is consistent with the actual decisions, as a brief review of the cases which have squarely adjudicated this question will show.

The two American cases of *First National Bank v. Balcom*¹³ and *Cooper v. Beers*,¹⁴ where the domicils concerned were both States of the Union, hold that the abandoned domicil of choice is retained until another is acquired. This seems to be sound, since under the federal Constitution a person is a citizen of that State in which he resides, and as long as his citizenship in the State of his abandoned domicil is retained it would appear to be sufficient evidence of the fact that he would regard that State as his home.¹⁵

Nor is the case of *Church v. Rowell*,¹⁶ which reached a conclusion generally held to be at variance with that of the two cases above, in conflict with the principle under consideration. Here a person whose domicil of origin was Maine, where he had lived until he was grown, subsequently acquired a domicil of choice in California, where he remained three years. He then left California, *sine animo revertendi*, returned to Maine, stayed for a short time in the town of H, where he had been reared, and later settled in the town of C, also in Maine. The court upheld an instruction to the effect that if, having left California *sine animo revertendi*, he came to H "as to his former established home" and was there on a certain date, with no intention to make any other particular place his home, he was taxable in H at that date. Here it appears that the most probable place of domicil was Maine, for he had come there "as to his former home," having cast off his California citizenship and resumed his citizenship in Maine.

The case of *In re Wrigley*¹⁷ was one in which a native of England had come to New York for commercial purposes, and remained there for seven years, acquiring a New York domicil. Upon his failure in business he returned to England, not intending to return to New York, remained there a few weeks, and then set out for Canada. While in New York on his way to Canada the question arose as to his domicil as determining his rights under the poor debtors' laws, and he was held to be domiciled in England. Since his citizenship was English and his residence in this country had been induced by his business connections which were at this time severed, the conclusion seems correct.

In *Udny v. Udny*,¹⁸ which is probably the leading case on this question, a person whose domicil of origin was Scotland and who was the head of a Scotch family, the ancestral estate of which he retained throughout his life, lived in leased houses in London for thirty-two years, until 1844, when he left England *sine animo re-*

¹³ *Supra*.

¹⁴ *Supra*.

¹⁵ The same reasoning also justifies the expressions found in the other cases cited under 4, *supra*.

¹⁶ 49 Me. 367.

¹⁷ 8 Wend. (N. Y.) 134.

¹⁸ *Supra*.

vertendi, and went to France. In 1853 his son, X, was born out of wedlock. In 1854 he returned to Scotland, became domiciled there, married the mother of X, and lived there until his death. It was conceded that he had not acquired a domicile in France. In determining the question of the legitimacy of X *per subsequens matrimonium*, it was material (according to the English law) to determine the domicile of the father at the time of the birth of X. The father was held to be domiciled in Scotland in 1853, since even if his domicile of origin had been suspended by the acquisition of an English domicile, it was revived upon the abandonment of the English domicile in 1844. This would seem to be the proper holding since he had severed all connection with England, while Scotland was the land of his fathers, where he retained his family estate, and to which he was bound by ties of affection.

In *The Indian Chief*¹⁹ a ship of that name was captured and its confiscation as the property of a British owner was attempted. The owner was a native and a citizen of the United States, who had gone to England for the purpose of trade and who was domiciled there at the time the ship sailed. Before its capture he had abandoned his English domicile and departed for the United States with the intention of resuming his domicile there. The court decided that he was domiciled in the United States at the time of the capture. The case proves itself by the principle suggested, for there was a *bona fide* declaration of intention to resume a former domicile coupled with action to put this intention into effect, as evidence of the probability of choice. The *Snelle Zeylder*²⁰ was a similar case, the owner being a native Englishman, domiciled in Surinam at the date of the sailing, but *in itinere* to resume his English domicile at the time of the capture.

In *Knight v. Foxwell*,²¹ the latest English case directly in point, a native Englishman came to New York and lived there seventeen years, becoming a naturalized citizen of the United States. He left New York *sine animo revertendi*, went to England, where he lived with his mother, and died there four years later. His wife had accompanied him to England, but deserted him while there. The court ruled that in order to prove him domiciled in England it was necessary to prove only his abandonment of his New York domicile. Here his return to his domicile of origin, where his ties of affection seem to have been, constitutes stronger evidence of a presumption of intention than does his naturalization in America, for it seems to indicate an abandonment of his New York citizenship as well as his New York domicile.²²

¹⁹ *Supra*.

²¹ L. R. 3 Ch. Div. 518.

²² As a matter of public international law, when a naturalized citizen of the United States leaves the state wherein he has thus become domiciled, *sine animo revertendi*, and returns to his native land with the intention of remaining there, he is presumed to have given up his citizenship in the United States. WHARTON, DIG. INT. LAW, § 176. *Quare*,

²⁰ 3 Rob. Adm. (Eng.) 21, note.